

110TH CONGRESS
2D SESSION

H. R. 6995

To amend the National Child Protection Act of 1993 to establish a permanent background check system.

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 22, 2008

Mr. SCHIFF (for himself and Mr. ROGERS of Michigan) introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To amend the National Child Protection Act of 1993 to establish a permanent background check system.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Child Protection Im-
5 provements Act of 2008”.

6 **SEC. 2. FINDINGS.**

7 Congress finds the following:

8 (1) In 2006, 61,200,000 adults (a total of 26.7
9 percent of the population) contributed a total of
10 8,100,000,000 hours of volunteer service. Of those

1 who volunteer, 27 percent dedicate their service to
2 education or youth programs, or a total of
3 16,500,000 adults.

4 (2) Assuming recent incarceration rates remain
5 unchanged, an estimated 6.6 percent of individuals
6 in the United States will serve time in prison for a
7 crime during their lifetime. The Integrated Auto-
8 mated Fingerprint Identification System of the Fed-
9 eral Bureau of Investigation maintains fingerprints
10 and criminal history records on more than
11 47,000,000 individuals, many of whom have been ar-
12 rested or convicted multiple times.

13 (3) A study released in 2002, found that, of in-
14 dividuals released from prison in 15 States in 1994,
15 an estimated 67.5 percent were rearrested for a fel-
16 ony or serious misdemeanor within 3 years. Three-
17 quarters of those new arrests resulted in convictions
18 or a new prison sentence.

19 (4) Given the large number of individuals with
20 criminal history records and the vulnerability of the
21 population they work with, human service organiza-
22 tions that work with children need an effective and
23 reliable means of obtaining relevant information
24 about criminal histories in order to determine the
25 suitability of a potential volunteer or employee.

1 (5) The large majority of Americans (88 per-
2 cent) favor granting youth-serving organizations ac-
3 cess to conviction records for screening volunteers
4 and 59 percent favored allowing youth-serving orga-
5 nizations to consider arrest records when screening
6 volunteers. This was the only use for which a major-
7 ity of those surveyed favored granting access to ar-
8 rest records.

9 (6) Congress has previously attempted to en-
10 sure that States make Federal Bureau of Investiga-
11 tion criminal history background checks available to
12 organizations seeking to screen employees and volun-
13 teers who work with children, the elderly, and indi-
14 viduals with disabilities, through the National Child
15 Protection Act of 1993 (42 U.S.C. 5119 et seq.) and
16 the Volunteers for Children Act (Public Law 105–
17 251; 112 Stat. 1885). However, according to a June
18 2006 report from the Attorney General, these laws
19 “did not have the intended impact of broadening the
20 availability of NCPA checks.”. A 2007 survey con-
21 ducted by MENTOR/National Mentoring Partner-
22 ship found that only 18 States allowed youth men-
23 toring organizations to access nationwide Federal
24 Bureau of Investigation background searches.

1 (7) Even when accessible, the cost of a criminal
2 history background check can be prohibitively expensive,
3 ranging from \$5 to \$75 for a State fingerprint
4 check, plus the Federal Bureau of Investigation fee,
5 which ranges between \$16 to \$24, for a total of between
6 \$21 and \$99 for each volunteer or employee.

7 (8) Delays in processing such checks can also
8 limit their utility. While the Federal Bureau of Investigation
9 processes all civil fingerprint requests in
10 less than 24 hours, State response times vary widely,
11 and can take as long as 42 days.

12 (9) The Child Safety Pilot Program under section
13 108 of the PROTECT Act (42 U.S.C. 5119a
14 note) revealed the importance of performing fingerprint-based
15 Federal Bureau of Investigation criminal history background
16 checks. Of 29,000 background checks performed through the pilot
17 program as of March 2007, 6.4 percent of volunteers were found to
18 have a criminal history of concern, including very serious
19 offenses such as sexual abuse of minors, assault, child cruelty,
20 murder, and serious drug offenses.
21
22

23 (10) In an analysis performed on the volunteers
24 screened in the first 18 months of the Child Safety
25 Pilot Program, it was found that over 25 percent of

1 the individuals with criminal histories had com-
2 mitted an offense in a State other than the State in
3 which they were applying to volunteer, meaning that
4 a State-only search would not have found relevant
5 criminal results. In addition, even though volunteers
6 knew a background check was being performed, over
7 50 percent of the individuals found to have a crimi-
8 nal history falsely indicated on their application
9 form that they did not have a criminal history.

10 (11) The Child Safety Pilot Program also dem-
11 onstrates that timely and affordable background
12 checks are possible, as background checks under
13 that program are completed within 3 to 5 business
14 days at a cost of \$18.

15 **SEC. 3. BACKGROUND CHECKS.**

16 The National Child Protection Act of 1993 (42
17 U.S.C. 5119 et seq.) is amended—

18 (1) by redesignating section 5 as section 6; and

19 (2) by inserting after section 4 the following:

20 **“SEC. 5. PROGRAM FOR NATIONAL CRIMINAL HISTORY**
21 **BACKGROUND CHECKS FOR CHILD-SERVING**
22 **ORGANIZATIONS.**

23 “(a) DEFINITIONS.—In this section—

24 “(1) the term ‘background check designee’
25 means the entity or organization, if any, designated

1 by or entering an agreement with the Attorney Gen-
2 eral under subsection (b)(3)(A) to carry out or assist
3 in carrying out the duties described in subsection
4 (c);

5 “(2) the term ‘child’ means an individual who
6 is less than 18 years of age;

7 “(3) the term ‘covered entity’ means a business
8 or organization, whether public, private, for-profit,
9 nonprofit, or voluntary that provides care, care
10 placement, supervision, treatment, education, train-
11 ing, instruction, or recreation to children, including
12 a business or organization that licenses, certifies, or
13 coordinates individuals or organizations to provide
14 care, care placement, supervision, treatment, edu-
15 cation, training, instruction, or recreation to chil-
16 dren;

17 “(4) the term ‘covered individual’ means an in-
18 dividual—

19 “(A) who has, seeks to have, or may have
20 unsupervised access to a child served by a cov-
21 ered entity; and

22 “(B) who—

23 “(i) is employed by or volunteers with,
24 or seeks to be employed by or volunteer
25 with, a covered entity; or

1 “(ii) owns or operates, or seeks to
2 own or operate, a covered entity;

3 “(5) the term ‘criminal history review designee’
4 means the entity or organization, if any, designated
5 by or entering an agreement with the Attorney Gen-
6 eral under subsection (b)(3)(B) to carry out or as-
7 sist in carrying out the criminal history review pro-
8 gram;

9 “(6) the term ‘criminal history review program’
10 means the program established under subsection
11 (b)(1)(B);

12 “(7) the term ‘identification document’ has the
13 meaning given that term in section 1028 of title 18,
14 United States Code;

15 “(8) the term ‘participating entity’ means a
16 covered entity that is—

17 “(A) located in a State that does not have
18 a qualified State program; and

19 “(B) approved under subsection (f) to re-
20 ceive nationwide background checks in accord-
21 ance with subsection (c) and participate in the
22 criminal history review program;

23 “(9) the term ‘qualified State program’ means
24 a program of a State authorized agency that the At-
25 torney General determines is meeting the standards

1 identified in subsection (b)(2) to ensure that a wide
2 range of youth-serving organizations have affordable
3 and timely access to nationwide background checks;

4 “(10) the term ‘open arrest’ means an arrest
5 relating to which charges may still be brought, tak-
6 ing into consideration the applicable statute of limi-
7 tations;

8 “(11) the term ‘pending charge’ means a crimi-
9 nal charge that has not been resolved through con-
10 viction, acquittal, dismissal, plea bargain, or any
11 other means;

12 “(12) the term ‘State’ means a State of the
13 United States, the District of Columbia, the Com-
14 monwealth of Puerto Rico, American Samoa, the
15 Virgin Islands, Guam, the Commonwealth of the
16 Northern Mariana Islands, the Federated States of
17 Micronesia, the Republic of the Marshall Islands,
18 and the Republic of Palau; and

19 “(13) the term ‘State authorized agency’ means
20 a division or office of a State designated by that
21 State to report, receive, or disseminate criminal his-
22 tory information.

23 “(b) ESTABLISHMENT OF PROGRAM.—

24 “(1) IN GENERAL.—Not later than 180 days
25 after the date of enactment of the Child Protection

1 Improvements Act of 2008, the Attorney General
2 shall—

3 “(A) establish policies and procedures to
4 carry out the duties described in subsection (c);
5 and

6 “(B) establish a criminal history review
7 program in accordance with subsection (d).

8 “(2) ASSESSMENTS.—The Attorney General
9 shall conduct—

10 “(A) an annual assessment of each State
11 authorized agency to determine whether the
12 agency operates a qualified State program, in-
13 cluding a review of whether the State author-
14 ized agency—

15 “(i) has designated a wide range of
16 covered entities as eligible to submit State
17 criminal background check requests and
18 nationwide background check requests to
19 the State authorized agency;

20 “(ii) charges a covered entity not
21 more than a total of \$25 and the fee
22 charged by the Federal Bureau of Inves-
23 tigation for a nationwide background
24 check; and

1 “(iii) returns requests for State criminal
2 background checks and nationwide
3 background checks to a covered entity not
4 later than 10 business days after the date
5 on which the request was made; and

6 “(B) in addition to an annual assessment
7 under subparagraph (A), an assessment described in that subparagraph of a State authorized
8 agency if—
9

10 “(i) a State authorized agency that
11 does not have a qualified State program
12 requests such an assessment; or

13 “(ii) the Attorney General receives reports from covered entities indicating that
14 a State authorized agency that has a qualified State program no longer meets the
15 standards described in subparagraph (A).
16
17

18 “(3) DESIGNEEES.—The Attorney General
19 may—

20 “(A) designate or enter into an agreement
21 with an entity or organization that has an established history of serving the interests of children to carry out or assist in carrying out the
22 duties described in subsection (c); and
23
24

1 “(B) designate or enter into an agreement
2 with 1 or more Federal, State, or local govern-
3 ment agencies to carry out or assist in carrying
4 out the criminal history review program.

5 “(c) ACCESS TO NATIONWIDE BACKGROUND
6 CHECKS.—

7 “(1) PURPOSE.—The purpose of this section is
8 to streamline the process of obtaining nationwide
9 background checks, provide effective customer serv-
10 ice, and facilitate widespread access to nationwide
11 background checks by participating entities.

12 “(2) DUTIES.—The Attorney General or the
13 background check designee shall—

14 “(A) handle inquiries from covered entities
15 and inform covered entities about how to re-
16 quest nationwide background checks—

17 “(i) for a covered entity located in a
18 State with a qualified State program, by
19 referring the covered entity to the State
20 authorized agency; and

21 “(ii) for a covered entity located in a
22 State without a qualified State program,
23 by providing information on the require-
24 ments to become a participating entity;

1 “(B) provide participating entities with ac-
2 cess to nationwide background checks on cov-
3 ered individuals in accordance with this section;

4 “(C) receive paper and electronic requests
5 for nationwide background checks on covered
6 individuals from participating entities;

7 “(D) to the extent practicable, negotiate
8 an agreement with each State authorized agen-
9 cy under which—

10 “(i) that State authorized agency shall
11 conduct a State criminal background check
12 within the time periods specified in sub-
13 section (e) in response to a request from
14 the Attorney General or the background
15 check designee and provide criminal his-
16 tory records to the Attorney General or the
17 criminal history review designee; and

18 “(ii) a participating entity may elect
19 to obtain a State criminal background
20 check, in addition to a nationwide back-
21 ground check, through 1 unified request to
22 the Attorney General or the background
23 check designee;

24 “(E) convert all paper fingerprint cards
25 into an electronic form and securely transmit

1 all fingerprints electronically to the national
2 criminal history background check system and,
3 if appropriate, the State authorized agencies;

4 “(F) collect a fee to conduct the nation-
5 wide background check, and, if appropriate, a
6 State criminal background check, and remit
7 fees to the Attorney General or the criminal
8 history review designee, the Federal Bureau of
9 Investigation, and, if appropriate, the State au-
10 thorized agencies; and

11 “(G) coordinate with the Federal Bureau
12 of Investigation, participating State authorized
13 agencies, and the Attorney General or the
14 criminal history review designee to ensure that
15 background check requests are being completed
16 within the time periods specified in subsection
17 (e).

18 “(3) REQUIRED INFORMATION.—A request for
19 a nationwide background check by a participating
20 entity shall include—

21 “(A) the fingerprints of the covered indi-
22 vidual, in paper or electronic form;

23 “(B) a photocopy of a valid identification
24 document; and

1 “(C) a statement completed and signed by
2 the covered individual that—

3 “(i) sets out the covered individual’s
4 name, address, and date of birth, as those
5 items of information appear on a valid
6 identification document;

7 “(ii) notifies the covered individual
8 that the Attorney General and, if appro-
9 priate, a State authorized agency may per-
10 form a criminal history background check
11 and that the signature of the covered indi-
12 vidual on the statement constitutes an ac-
13 knowledgment that such a check may be
14 conducted;

15 “(iii) notifies the covered individual
16 that the signature of the covered individual
17 constitutes consent to participate in the
18 criminal history review program, under
19 which the participating entity may be in-
20 formed if the criminal history records of
21 the covered individual reveal a criminal
22 history that warrants special concern or
23 further inquiry;

24 “(iv) notifies the covered individual
25 that the covered individual shall be pro-

1 vided with a copy of the criminal history
2 records of the covered individual and shall
3 have 10 business days to review the
4 records, challenge the accuracy or com-
5 pleteness of any information in the
6 records, or withdraw consent to participate
7 in the criminal history review program be-
8 fore any information about the criminal
9 history of the covered individual is pro-
10 vided to the participating entity; and

11 “(v) notifies the covered individual
12 that prior to and after the completion of
13 the background check, the participating
14 entity may choose to deny the covered indi-
15 vidual access to children.

16 “(4) FEES.—

17 “(A) IN GENERAL.—The Attorney General
18 or the background check designee may collect a
19 fee to defray the costs of carrying out the du-
20 ties described in this subsection, the costs of
21 the Federal Bureau of Investigation and State
22 and local agencies in resolving the accuracy of
23 criminal history records of covered individuals,
24 and the duties of the criminal history review
25 designee under this section—

1 “(i) for a nationwide background
2 check and criminal history review, in an
3 amount not to exceed the lesser of—

4 “(I) the sum of—

5 “(aa) the actual cost to the
6 Attorney General or the back-
7 ground check designee of con-
8 ducting a nationwide background
9 check;

10 “(bb) the actual cost to the
11 Attorney General or the criminal
12 history review designee of con-
13 ducting a criminal history review
14 under this section; and

15 “(cc) any costs associated
16 with resolving inaccuracies, omis-
17 sions, or challenges to a covered
18 individual’s criminal history; or

19 “(II) to the extent practicable, no
20 greater than \$25 for any participating
21 entity; and

22 “(ii) for a State criminal background
23 check described in paragraph (2)(D), in
24 the amount specified in the agreement with

1 the applicable State authorized agency, not
2 to exceed \$25.

3 “(B) PROHIBITION ON FEES.—

4 “(i) IN GENERAL.—A participating
5 entity may not charge another entity or in-
6 dividual a surcharge to access a back-
7 ground check conducted under this section.

8 “(ii) VIOLATION.—The Attorney Gen-
9 eral shall bar any participating entity that
10 the Attorney General determines violated
11 clause (i) from submitting background
12 checks under this section.

13 “(d) CRIMINAL HISTORY REVIEW PROGRAM.—

14 “(1) PURPOSE.—The purpose of the criminal
15 history review program is to provide participating
16 entities with reliable and accurate information re-
17 garding whether a covered individual has been con-
18 victed of, or has an open arrest or pending charges
19 for, a crime that may bear upon the fitness of the
20 covered individual to have responsibility for the safe-
21 ty and well-being of the children in their care.

22 “(2) REQUIREMENTS.—The Attorney General
23 or the criminal history review designee shall—

24 “(A) establish procedures to securely re-
25 ceive criminal history records from the Federal

1 Bureau of Investigation, if necessary, and from
2 State authorized agencies, if appropriate;

3 “(B) establish procedures to resolve poten-
4 tially incomplete records, under which the At-
5 torney General or the criminal history review
6 designee shall—

7 “(i) determine whether the criminal
8 history record—

9 “(I) includes an arrest—

10 “(aa) that would meet the
11 criteria described in paragraph
12 (3)(B)(ii) if it were an open ar-
13 rest; and

14 “(bb) relating to which the
15 criminal history record does not
16 indicate whether charges resulted
17 from the arrest;

18 “(II) includes a criminal
19 charge—

20 “(aa) for which a conviction
21 would meet the criteria described
22 in subparagraph (A) or (B) of
23 paragraph (3); and

24 “(bb) relating to which the
25 criminal history record does not

1 indicate any disposition of the
2 charge; or

3 “(III) includes a criminal
4 charge—

5 “(aa) that would meet the
6 criteria described in paragraph
7 (3)(B)(ii) if it were a pending
8 charge; and

9 “(bb) relating to which the
10 criminal history record does not
11 indicate any disposition of the
12 charge; and

13 “(ii) if the criminal history record in-
14 cludes an arrest or charge described in
15 clause (i), request that the Federal Bureau
16 of Investigation—

17 “(I) determine the status of any
18 such arrest or charge;

19 “(II) update the criminal history
20 record with any disposition informa-
21 tion; and

22 “(III) convey the result of the de-
23 termination and any updated record
24 to the Attorney General or criminal
25 history review designee;

1 “(C) after receiving a criminal history
2 record from the Federal Bureau of Investiga-
3 tion and, if necessary, resolving any potentially
4 incomplete information through the procedures
5 described in subparagraph (B), transmit to the
6 covered individual—

7 “(i) the criminal history records;

8 “(ii) a detailed notification of the
9 rights of the covered individual under sub-
10 section (g); and

11 “(iii) information about how to con-
12 tact the Attorney General or criminal his-
13 tory review designee for the purpose of
14 challenging the accuracy or completeness
15 of any information in the criminal history
16 record or to withdraw consent to partici-
17 pate in the criminal history review pro-
18 gram;

19 “(D) if the covered individual informs the
20 Attorney General or criminal history review des-
21 ignee that the covered individual intends to
22 challenge the accuracy or completeness of any
23 information in the criminal history record, as-
24 sist the covered individual in contacting the ap-
25 propriate persons or offices within the Federal

1 Bureau of Investigation or State authorized
2 agency;

3 “(E) make determinations regarding
4 whether the criminal history records received in
5 response to a criminal history background check
6 conducted under this section indicate that the
7 covered individual has a criminal history that
8 may bear on the covered individual’s fitness to
9 provide care to children, based solely on the cri-
10 teria described in paragraph (3);

11 “(F) unless the covered individual has
12 withdrawn consent to participate in the criminal
13 history review program, convey to the partici-
14 pating entity that submitted the request for a
15 nationwide background check—

16 “(i) which of the 3 categorizations de-
17 scribed in paragraph (3) criminal convic-
18 tion of special concern identified, further
19 inquiry recommended, or no criminal
20 records of special concern identified apply
21 to the covered individual;

22 “(ii) information and guidance relat-
23 ing to the appropriate use of criminal his-
24 tory information when making decisions re-

1 garding hiring employees and using volun-
2 teers;

3 “(iii) if a criminal history that meets
4 the criteria set forth in subparagraph (A)
5 or (B) of paragraph (3) is found, a rec-
6 ommendation to the participating entity to
7 consult with the covered individual in order
8 to obtain more information about the
9 criminal history of the covered individual,
10 and a list of factors to consider in assess-
11 ing the significance of that criminal his-
12 tory, including—

13 “(I) the nature, gravity, and cir-
14 cumstances of the offense, including
15 whether the individual was convicted
16 of the offense;

17 “(II) the period of time that has
18 elapsed since the date of the offense
19 or end of a period of incarceration or
20 supervised release;

21 “(III) the nature of the position
22 held or sought; and

23 “(IV) any evidence of rehabilita-
24 tion; and

1 “(iv) instructions and guidance that,
2 in evaluating the considerations described
3 in clause (iii), the participating entity
4 should consult the Equal Employment Op-
5 portunity Commission Policy Statement on
6 the Issue of Conviction Records under
7 Title VII of the Civil Rights Act or any
8 successor thereto issued by the Equal Em-
9 ployment Opportunity Commission;

10 “(G) if a covered individual has withdrawn
11 consent to participate in the criminal history re-
12 view program, inform the participating entity
13 that consent has been withdrawn;

14 “(H) work with the Attorney General or
15 the background check designee and the Federal
16 Bureau of Investigation to develop processes
17 and procedures to ensure that criminal history
18 background check requests are completed within
19 the time periods specified in subsection (e); and

20 “(I) serve as a national resource center to
21 provide guidance and assistance to participating
22 entities on how to interpret criminal history in-
23 formation, the possible restrictions that apply
24 when making hiring decisions based on criminal
25 histories, and other related information.

1 “(3) CRIMINAL HISTORY REVIEW CRITERIA.—
2 The Attorney General or the criminal history review
3 designee shall, in determining when a criminal his-
4 tory record indicates that a covered individual has a
5 criminal history that may bear on the fitness of the
6 covered individual to provide care to children—

7 “(A) assign a categorization of criminal
8 conviction of special concern identified if a cov-
9 ered individual is found to have a conviction
10 that would prevent the individual from being
11 approved as a foster or adoptive parent under
12 section 471(a)(20)(A) of the Social Security Act
13 (42 U.S.C. 671(a)(20)(A));

14 “(B) assign a categorization of further in-
15 quiry recommended if a covered individual is
16 found to have—

17 “(i) a conviction for a serious mis-
18 demeanor involving the same type of con-
19 duct prohibited by a felony described in
20 section 471(a)(20)(A) of the Social Secu-
21 rity Act (42 U.S.C. 671(a)(20)(A)) that
22 was committed—

23 “(I) during the 5-year period
24 ending on the date of the criminal his-
25 tory review; or

1 “(II) in the case of a crime
2 against a child, at any time; or

3 “(ii) an open arrest or pending charge
4 for a felony described in, or a serious mis-
5 demeanor involving the same type of con-
6 duct prohibited by a felony described in,
7 section 471(a)(20)(A) of the Social Secu-
8 rity Act (42 U.S.C. 671(a)(20)(A)); and

9 “(C) assign a categorization of no criminal
10 records of special concern identified for a cov-
11 ered individual that does not meet the criteria
12 described in subparagraph (A) or (B).

13 “(e) TIMING.—

14 “(1) IN GENERAL.—Unless exceptional cir-
15 cumstances apply, criminal background checks shall
16 be completed according to the time frame under this
17 subsection. The Attorney General or the background
18 check designee shall work with the criminal history
19 review designee and the Federal Bureau of Inves-
20 tigation to ensure that the time limits under this
21 subsection are being achieved.

22 “(2) APPLICATION PROCESSING.—The Attorney
23 General or the background check designee shall elec-
24 tronically submit a national background check re-
25 quest to the Federal Bureau of Investigation and, if

1 appropriate, the participating State authorized agen-
2 cy not later than 2 business days after the date on
3 which a request for a national background check is
4 received by the Attorney General or the background
5 check designee.

6 “(3) CONDUCT OF BACKGROUND CHECKS.—The
7 Federal Bureau of Investigation and, if appropriate,
8 a State authorized agency shall provide criminal his-
9 tory records to the Attorney General or the criminal
10 history review designee not later than 2 business
11 days after the date on which the Federal Bureau of
12 Investigation or State authorized agency, as the case
13 may be, receives a request for a nationwide back-
14 ground check from the Attorney General or the
15 background check designee.

16 “(4) RESOLUTION OF POTENTIALLY INCOM-
17 PLETE RECORDS.—The Attorney General or criminal
18 history review designee shall submit any request that
19 the Federal Bureau of Investigation investigate po-
20 tentially incomplete records not later than 3 busi-
21 ness days after the date on which the Attorney Gen-
22 eral or criminal history review designee receives the
23 criminal history records from the Federal Bureau of
24 Investigation or State authorized agency. Unless the
25 Federal Bureau of Investigation certifies that addi-

1 tional time is needed, the Federal Bureau of Inves-
2 tigation shall complete the investigation, and provide
3 the Attorney General or criminal history review des-
4 ignee with the results of the investigation and any
5 updated criminal history records, not later than 5
6 business days after the date on which Federal Bu-
7 reau of Investigation receives a request from the At-
8 torney General or criminal history designee.

9 “(5) PROVISION OF RECORDS TO COVERED IN-
10 DIVIDUALS AND OPPORTUNITY TO CHALLENGE.—

11 When the Attorney General or the criminal history
12 review designee finds that a covered individual’s
13 criminal history records fall with the categorizations
14 described in subparagraph (A) or (B) of subsection
15 (d)(3), the Attorney General or criminal history re-
16 view designee shall provide the covered individual
17 with the criminal history records of the covered indi-
18 vidual and a detailed notification of the rights of the
19 covered individual under subsection (g) not later
20 than 1 business day after the date on which the At-
21 torney General or criminal history review designee
22 receives a criminal history record from the Federal
23 Bureau of Investigation and, if necessary, resolves
24 any potentially incomplete information in accordance
25 with subsection (d)(2)(B). The covered individual

1 shall have 10 business days from the date sent to
2 challenge the accuracy or completeness of any infor-
3 mation in the criminal history record or to withdraw
4 consent to participate in the criminal history review
5 program.

6 “(6) CRIMINAL HISTORY REVIEWS.—Unless the
7 Federal Bureau of Investigation certifies that fur-
8 ther time is required to resolve a challenge brought
9 by a covered individual, the Attorney General or the
10 criminal history review designee shall convey to the
11 participating entity the information set forth in sub-
12 paragraph (F) or (G) of subsection (d)(2), as appro-
13 priate, 10 business days after providing the covered
14 individuals with the criminal history records of the
15 covered individual and a notification of their rights
16 under subsection (g).

17 “(f) PARTICIPATION IN PROGRAM.—

18 “(1) IN GENERAL.—The Attorney General or
19 the background check designee shall determine
20 whether an entity is a covered entity and whether
21 that covered entity should be approved as a partici-
22 pating entity, based on—

23 “(A) whether the entity is located in a
24 State that has a qualified State program; and

1 “(B) the consultation conducted under
2 paragraph (2).

3 “(2) CONSULTATION.—In determining how
4 many covered entities to approve as participating en-
5 tities, the Attorney General or the background check
6 designee shall consult quarterly with the Federal
7 Bureau of Investigation and the criminal history re-
8 view designee to determine the volume of requests
9 for national background checks that can be com-
10 pleted, based on the capacity of the criminal history
11 review program and the Federal Bureau of Inves-
12 tigation, the availability of resources, and the dem-
13 onstrated need for national background checks in
14 order to protect children.

15 “(3) PREFERENCE FOR NONPROFIT ORGANIZA-
16 TIONS.—In determining whether a covered entity
17 should be approved as a participating entity under
18 paragraph (1), the Attorney General or the back-
19 ground check designee shall give preference to any
20 organization participating in the Child Safety Pilot
21 Program under section 108(a)(3) of the PROTECT
22 Act (42 U.S.C. 5119a note) on the date of enact-
23 ment of the Child Protection Improvements Act of
24 2008 and to any other nonprofit organizations.

1 “(g) RIGHT OF COVERED INDIVIDUALS TO CHAL-
2 LENGE ACCURACY OR COMPLETENESS OF RECORDS.—A
3 covered individual who is the subject of a nationwide back-
4 ground check under this section may challenge the accu-
5 racy and completeness of the criminal history records in
6 the criminal history report as provided in subsection
7 (d)(2)(D), without submitting a separate set of finger-
8 prints or an additional fee.

9 “(h) DUTIES OF THE FEDERAL BUREAU OF INVES-
10 TIGATION.—

11 “(1) RESPONSE TO A REQUEST FOR CRIMINAL
12 BACKGROUND RECORDS.—Upon request by the At-
13 torney General or background check designee, the
14 Federal Bureau of Investigation shall conduct a na-
15 tionwide background check and provide any criminal
16 history records to the Attorney General or criminal
17 history review designee.

18 “(2) OPEN ARRESTS OR PENDING CHARGES.—
19 Upon request by the Attorney General or criminal
20 history review designee, the Federal Bureau of In-
21 vestigation shall—

22 “(A) investigate any arrest or charge de-
23 scribed in subsection (d)(2)(B)(i) with relevant
24 departments and agencies of the Federal Gov-
25 ernment and State and local governments;

1 “(B) determine the status of any such ar-
2 rest or charge;

3 “(C) update the criminal history record
4 with any disposition information; and

5 “(D) convey the result of the determina-
6 tion and any updated criminal history record to
7 the Attorney General or criminal history review
8 designee.

9 “(3) RESOLUTION OF CHALLENGES.—If a cov-
10 ered individual challenges the accuracy or complete-
11 ness of any information in the criminal history
12 record of the covered individual, the Federal Bureau
13 of Investigation, in consultation with the agency that
14 contributed to the record, shall—

15 “(A) investigate the challenge with relevant
16 departments and agencies of the Federal Gov-
17 ernment and State and local governments;

18 “(B) promptly make a determination re-
19 garding the accuracy and completeness of the
20 challenged information; and

21 “(C) correct any inaccurate or incomplete
22 records.

23 “(i) AUTHORIZATION OF APPROPRIATIONS.—

24 “(1) IN GENERAL.—There are authorized to be
25 appropriated to the Attorney General for each of fis-

1 cal years 2009 through 2012 such sums as are nec-
2 essary to carry out the provisions of this Act.

3 “(2) SENSE OF THE HOUSE.—It is the sense of
4 the House of Representatives that in fiscal year
5 2009, and each fiscal year thereafter, the fees col-
6 lected by the Attorney General or the background
7 check designee should be sufficient to carry out the
8 duties of the Attorney General or the background
9 check designee under this section and to help sup-
10 port the criminal history review program.

11 “(j) COLLECTION OF DATA AND REPORT TO CON-
12 GRESS.—

13 “(1) IN GENERAL.—Not later than 1 year after
14 the date of enactment of the Child Protection Im-
15 provements Act of 2008, and annually thereafter,
16 the Attorney General shall prepare and submit to
17 Congress and make available to the public a report
18 on the programs and procedures established under
19 this Act.

20 “(2) COLLECTION OF DATA.—

21 “(A) DEFINITION OF DEMOGRAPHIC CHAR-
22 ACTERISTICS.—In this paragraph, the term ‘de-
23 mographic characteristics’ includes information
24 pertaining to race, color, ancestry, national ori-
25 gin, age, sex, and marital status.

1 “(B) COMPILING.—Beginning 90 days
2 after the date of enactment of the Child Protec-
3 tion Improvements Act of 2008, the Attorney
4 General shall compile data regarding—

5 “(i) the number and types of partici-
6 pating entities;

7 “(ii) the fees charged to participating
8 entities under this section;

9 “(iii) the time interval between na-
10 tionwide background check submissions
11 and responses under this section;

12 “(iv) the fiscal impact of this section
13 on State authorized agencies;

14 “(v) the number and demographic
15 characteristics of covered individuals sub-
16 mitting a statement described in subsection
17 (c)(3)(A)(iii) as part of a request for a na-
18 tionwide background check;

19 “(vi) the number and demographic
20 characteristics of covered individuals deter-
21 mined to have a criminal history;

22 “(vii) the number, type (including the
23 identity of the offense and whether the of-
24 fense was committed while the covered in-
25 dividual was a juvenile or adult), and fre-

1 quency of offenses, and length of the pe-
2 riod between the date of the offense and
3 the date of the nationwide background
4 check for any covered individuals found to
5 have a criminal history under this section;

6 “(viii) the procedures available for
7 covered individuals to challenge the accu-
8 racy and completeness of criminal history
9 records under this section;

10 “(ix) the number and results of chal-
11 lenges to the accuracy and completeness of
12 criminal history records under this section;

13 “(x) the number and types of correc-
14 tions of erroneous criminal history records
15 based on a challenge under this section;
16 and

17 “(xi) the number and types of inquir-
18 ies for assistance on interpreting a crimi-
19 nal history received by the criminal history
20 review program.

21 “(C) AGGREGATING DATA.—The Attorney
22 General shall—

23 “(i) aggregate the data collected
24 under this paragraph by State and city;
25 and

1 “(ii) aggregate the data collected
2 under clauses (v), (vi), and (vii) of sub-
3 paragraph (B) by race, color, ancestry, na-
4 tional origin, age, sex, and marital status.

5 “(D) REPORTS.—

6 “(i) IN GENERAL.—Not later than 1
7 year after the date of enactment of the
8 Child Protection Improvements Act of
9 2008, and annually thereafter, the Attor-
10 ney General shall prepare and submit to
11 Congress a report concerning the data
12 compiled and aggregated under this para-
13 graph.

14 “(ii) CONTENTS.—Each report sub-
15 mitted under clause (i) shall contain—

16 “(I) the data compiled and ag-
17 gregated under this paragraph, orga-
18 nized in such a way as to provide a
19 comprehensive analysis of the pro-
20 grams and procedures established
21 under this section;

22 “(II) information regarding and
23 analysis of—

1 “(aa) the programs and pro-
2 cedures established under this
3 section; and

4 “(bb) the extent such pro-
5 grams and procedures have
6 helped screen individuals who
7 may pose a risk to children; and

8 “(III) information regarding and
9 analysis of whether and to what ex-
10 tent the programs and procedures es-
11 tablished under this section are hav-
12 ing a disparate impact on individuals
13 based on race, color, ancestry, na-
14 tional origin, age, sex, or marital sta-
15 tus.

16 “(iii) RECOMMENDATIONS.—A report
17 submitted under clause (i) may contain
18 recommendations to Congress on possible
19 legislative improvements to this section.

20 “(iv) ADDITIONAL INFORMATION.—
21 Upon the request of any member of Con-
22 gress, the Attorney General shall make
23 available any of the data compiled or ag-
24 gregated under this paragraph. The Attor-

1 ney General shall not make available any
2 data that identifies specific individuals.

3 “(k) LIMITATION ON LIABILITY.—

4 “(1) IN GENERAL.—

5 “(A) FAILURE TO CONDUCT CRIMINAL
6 BACKGROUND CHECKS.—No participating entity
7 shall be liable in an action for damages solely
8 for failure to conduct a criminal background
9 check on a covered individual.

10 “(B) FAILURE TO TAKE ADVERSE ACTION
11 AGAINST COVERED INDIVIDUAL.—No partici-
12 pating entity shall be liable in an action for
13 damages solely for a failure to take action ad-
14 verse to a covered individual upon receiving any
15 notice of criminal history from the Attorney
16 General or the criminal history review designee
17 under subsection (d)(2)(F).

18 “(2) RELIANCE.—A participating entity that
19 reasonably relies on criminal history records received
20 in response to a background check under this section
21 shall not be liable in an action for damages based
22 on the inaccuracy or incompleteness of that informa-
23 tion.

24 “(3) CRIMINAL HISTORY REVIEW PROGRAM.—

1 “(A) IN GENERAL.—Except as provided in
2 subparagraphs (B) and (C), the criminal his-
3 tory review designee, including a director, offi-
4 cer, employee, or agent of the criminal history
5 review designee, shall not be liable in an action
6 for damages relating to the performance of the
7 responsibilities and functions of the criminal
8 history review designee under this section.

9 “(B) INTENTIONAL, RECKLESS, OR OTHER
10 MISCONDUCT.—Subparagraph (A) shall not
11 apply in an action if the criminal history review
12 designee, or a director, officer, employee, or
13 agent of the criminal history review designee,
14 engaged in intentional misconduct or acted, or
15 failed to act, with actual malice, with reckless
16 disregard to a substantial risk of causing injury
17 without legal justification, or for a purpose un-
18 related to the performance of responsibilities or
19 functions under this section.

20 “(C) ORDINARY BUSINESS ACTIVITIES.—
21 Subparagraph (A) shall not apply to an act or
22 omission relating to an ordinary business activ-
23 ity, such as an activity involving general admin-
24 istration or operations, the use of motor vehi-
25 cles, or personnel management.

1 “(4) CIVIL CLAIMS OF DAMAGES.—Nothing in
2 this subsection shall apply in actions for damages
3 based upon title VII of the Civil Rights Act of 1964
4 or the Fair Credit Report Act.

5 “(1) PRIVACY OF INFORMATION.—

6 “(1) PROHIBITION ON UNAUTHORIZED DISCLO-
7 SURE OR USE OF CRIMINAL HISTORY RECORDS.—
8 Except for a covered individual, any entity or indi-
9 vidual authorized to receive or transmit fingerprints
10 or criminal history records under this Act—

11 “(A) shall use the fingerprints, criminal
12 history records, or information in the criminal
13 history records only for the purposes specifically
14 set forth in this Act;

15 “(B) shall allow access to the fingerprints,
16 criminal history records, or information in the
17 criminal history records only to those employees
18 of the entity, and only on such terms, as are
19 necessary to fulfill the purposes set forth in this
20 Act;

21 “(C) shall not disclose the fingerprints,
22 criminal history records, or information in the
23 criminal history records, except as specifically
24 authorized under this Act;

1 “(D) shall keep a written record of each
2 authorized disclosure of the fingerprints, crimi-
3 nal history records, or the information in the
4 criminal history records; and

5 “(E) shall maintain adequate security
6 measures to ensure the confidentiality of the
7 fingerprints, the criminal history records, and
8 the information in the criminal history records.

9 “(2) COMPLIANCE.—

10 “(A) IN GENERAL.—The Attorney General
11 shall promulgate regulations to ensure the en-
12 forcement of the nondisclosure requirements
13 under paragraph (1) and to provide for appro-
14 priate sanctions in the case of violations of the
15 requirements.

16 “(B) PARTICIPATING ENTITIES AND DES-
17 IGNEES.—The participation in any program
18 under this section by an entity or organization
19 that enters into an agreement with the Attorney
20 General to carry out the duties described in
21 subsection (c) or to carry out the criminal his-
22 tory review program shall be conditioned on the
23 person—

1 “(i) establishing procedures to ensure
2 compliance with, and respond to any viola-
3 tions of, paragraph (1); and

4 “(ii) maintaining substantial compli-
5 ance with paragraph (1).

6 “(3) DESTRUCTION OF RECORDS.—

7 “(A) IN GENERAL.—Except as provided in
8 subparagraph (B), the Attorney General, the
9 background check designee, and the criminal
10 history review designee shall destroy any finger-
11 prints, either in paper or electronic form, or
12 criminal history record received for the purpose
13 of carrying out the provisions of this Act after
14 any transaction based on the fingerprints or
15 criminal history record is completed, and shall
16 not maintain the fingerprints, the criminal his-
17 tory records, or the information in the criminal
18 history record in any form.

19 “(B) REPEAT APPLICANTS.—A covered in-
20 dividual may sign a release permitting the At-
21 torney General or criminal history review des-
22 ignee to retain the fingerprints and criminal
23 history record of the covered individual for a
24 period not to exceed 5 years, for the sole pur-

1 pose of participating in the criminal history re-
2 view program on a subsequent occasion.”.

3 **SEC. 4. EXTENSION OF CHILD SAFETY PILOT.**

4 Section 108(a)(3)(A) of the PROTECT Act (42
5 U.S.C. 5119a note) is amended—

6 (1) by striking “60-month”; and

7 (2) by adding at the end the following: “The
8 Child Safety Pilot Program under this paragraph
9 shall terminate on the date that the program for na-
10 tional criminal history background checks for child-
11 serving organizations established under the Child
12 Protection Improvements Act of 2008 is operating
13 and able to enroll any organization using the Child
14 Safety Pilot Program.”.

○